

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONALD JAMES ANSON,

Plaintiff,

-v-

DECISION AND ORDER
07-CV-0035Sr

UNITED STATES OF AMERICA and
UNITED STATES MARSHAL SERVICE,

Defendants.

Plaintiff, Donald Anson, who at the time of the incident alleged in the complaint was a federal pre-trial detainee pending indictment in this Court, and has now been sentenced to the custody of the United States Bureau of Prisons, has filed a complaint under the Federal Tort Claims Act, 28 U.S.C. § § 1346(b)(1), 2674, alleging that two Deputy United States Marshals were negligent when they transported him to and from court and that, as a result, he suffered a torn rotator cuff and other injuries. Plaintiff seeks permission to proceed *in forma pauperis* and has both met the statutory requirements and furnished the Court with a signed Authorization. Accordingly, plaintiff's request to proceed as a poor person is hereby granted, and the complaint as against defendant United States Marshals Service is dismissed. In addition, plaintiff's complaint has been screened by the Court with respect to the 28 U.S.C. §§ 1915(e) and 1915A criteria.

Under the Federal Tort Claims Act, the United States is the only proper defendant. 28 U.S.C. § § 2674; 2679(a), (b)(1); see, e.g., *Rivera v. U.S.*, 928 F.2d 592 (2d Cir. 1991) ("Federal Tort Claims Act (FTCA) precludes tort suit against federal agencies and makes the only proper federal institutional defendant in such an action the United States").

Accordingly, pursuant to 28 U.S.C. § § 1915(e)(2)(B) and 1915A(b), the complaint is dismissed with prejudice against defendant United States Marshal Service.

The Clerk of the Court is directed to file plaintiff's papers, and to cause the United States Marshal to serve copies of the Summons, Complaint, and this Order upon the defendant United States of America without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor.

SO ORDERED.

Dated: FEB. 28, 2007
Rochester, New York

Charles J. Stragusa
CHARLES J. STRAGUSA
United States District Judge